

The BOC Group, Inc. and David Kimbrough, Petitioner and Chauffeurs and Sales Drivers, Teamsters Local Union #402. Case 10-RD-1274

June 27, 1997

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

The National Labor Relations Board has considered the Employer's request for review of the Regional Director's administrative dismissal of the instant petition. The request for review is granted. On review, for the reasons stated below, we affirm the Regional Director's dismissal but modify his rationale and provide for conditional reinstatement of the petition.

On May 30, 1996, the Union filed a charge in Case 10-CA-29355, amended on December 4, 1996, alleging that the Employer violated Section 8(a)(1), (3), and (5) of the Act by changing its past practice of compensating employees for attending company meetings and by failing to post regional job notices. The first allegation was the subject of an informal Board settlement agreement and that portion of the charge was dismissed pursuant thereto on January 8, 1997.

On August 19, 1996, the Union filed a charge in Case 10-CA-29537 alleging that the Employer violated Section 8(a)(1), (3), and (5) of the Act by unlawfully implementing terms and conditions of employment that varied from its last offer to the Union. The remaining allegation in Case 10-CA-29355 was consolidated with the 8(a)(5) allegation in Case 10-CA-29537, and a complaint was issued on January 30, 1997. The cases were set for hearing and are currently pending before an administrative law judge.

On December 11, 1996, the instant petition was filed. On March 18, 1997, the Regional Director dismissed the petition pursuant to *Douglas-Randall, Inc.*, 320 NLRB 431 (1995), noting that it "was filed after

the onset of alleged unlawful activity, but prior to the settlement."

Under *Douglas-Randall*, when an employer enters into a settlement agreement resolving outstanding unfair labor practice charges and complaints by recognizing and bargaining with the union, any decertification petition filed subsequent to the onset of the alleged unlawful conduct will be dismissed, without provision for reinstatement. *Id.* at 435. While the instant petition was filed prior to the settlement of the outstanding unfair labor practice charges in Case 10-CA-29355, that settlement agreement does not contain a requirement that the Employer recognize and bargain with the Union and does not involve the type of unfair labor practices that would preclude a question concerning representation under *Douglas-Randall*.¹

Although we therefore find that the petition should not be dismissed under *Douglas-Randall*, there are other pending 8(a)(3) and (5) allegations in Cases 10-CA-29355 and 10-CA-29537, which, if proven, may result in a bargaining order and preclude a question concerning representation. See *Big Three Industries*, 201 NLRB 197 (1973). We therefore find that the petition should be dismissed, subject to reinstatement, if appropriate, on request, after final disposition of the unfair labor practice proceedings. The decertification petitioner is made a party in interest to the unfair labor practice proceeding, limited solely to receipt of a copy of the Order or other document that finally disposes of the proceeding. See generally NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11730.11.

¹ Contrary to the Employer's contention, the fact that the settlement agreement contains a nonadmission clause is not relevant in determining whether a petition should be dismissed under *Douglas-Randall*. The Board acknowledged in *Douglas-Randall* that the settlement agreement therein was not an admission or finding of unlawful conduct, but found that dismissal was required in order to give proper effect to the settlement agreement. 320 NLRB at 433 fn. 9.